IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.214 OF 2007

Ms.Laxmi Rajan Nair
Age 29 years, residing at
Hut No.B-1, 147, Indira
Nagar Hutment, Sion-Koliwada,
Mumbai - 400 022. ..Petitioner

Vs.

1.Shri A.N.Roy
Commisioner of Police,
Greater Bombay.

2.The State of Maharashtra
(Through the Secretary
Home Department (Spl.)
Mantralaya, Mumbai.

3.The Superintendent
Nashik Road Central Prison,
Nashik. .Respondents

Mr.U.N.Tripathi for the Petitioner.
Mr.D.S.Mhaispurkar, Addl.P.P. for the Respondents.

CORAM :- DR.S.RADHAKRISHNAN &
SMT.R.S.DALVI, JJ.

JUDGMENT RESERVED ON : 23RD OCTOBER,2007
JUDGMENT DELIVERED ON : 26TH OCTOBER,2007

JUDGMENT (PER : DR.S.RADHAKRISHNAN,J.)

1. By this Petition, the Petitioner who is the sister of the detenu, is challenging the Detention Order dated 26th October,2006 passed by the Commissioner of Police, Brihan Mumbai against the detenu, under Section 3(2) of the Maharashtra Prevention of Dangerous Activites of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act,1981 (hereinafter referred to as the "Said Act") on the ground to prevent the Detenu from acting in any manner prejudicial to the maintenance of public order. Mr.Tripathi, the learned Counsel appearing on behalf of the Petitioner argued the above Petition only on two grounds, though various grounds are raised.

2. So far as the first ground is concerned, the learned Counsel for the Petitioner submitted that one criminal case has been filed against the detenu with regard to the incident of 29th July,2006 as well as two in-camera statements with regard to the incident which took place during the fourth week of July,2006. Another incident which took place during the night of the last week of July,2006 stating that the incidents

referred to therein do not amount to any activity which is prejudicial to the maintenance of public order and at the most the same would be a question of only law and order.

3. We have perused the grounds of detention. With regard to first incident which took place on 29th July,2006 pertaining to which a case has already been filed, a case is pending before the learned Additional Chief Metropolitan Magistrate, 11th Court, Kurla. The facts pertaining to the same are as under:

> On 29th July,2006, in the evening at about 20.00 hours, the Complainant Shri.Raju Madhukar Kamble was attending his business in Hirachand Stores in shop No.5, Flank Road, Shivaji Chowk, Antop Hill. At that time, you, your associate Ajit More along with two unknown associates went there. You alleged saying that "rqus iksyhl dks [kcj dh] rHkh iqyhlus eq>s fxjlrkj fd;k ! eq>s tsyls ckgj vkusds fy;s chl gtkj #i;k [kpkZ vk;k ! og rw>s nsuk iMsxk !" The complainant said that there was no connection of his in the

matter. You got annoyed over this and rushed at the complainant and shouted, “rw eq>s iSls ugh nsxk rks ;kn j[kuk] gkFk iko rksM nqaxk“ saying so, you turned the bench where the complainant had maintained lottery tickets in the shop upside down and spoilt the same. You then caught hold of the shirt of the complainant and further threatened him saying, “xkaMw iSlk ugh nsxk rks Vkax rksM nwaxk“ Seeing your violent act businessmen doing business in the locality as well as people who were passing along the street started collecting there and someone came forward to save the complainant. On this, one of your associates took out a chopper and raised the same at those people and roared, “ dksbZ vkxs vk;sxk rks mldk vatke cqqjk gksxk” Hearing utterances of your associates and witnessing his dastardly act, people got scared and ran helter- skelter and

thereafter, the complainant to avoid further trouble, took out 4000/- and handed over to you. While leaving the place with the said money, you further threatened the complainant saying, "eS okil vk;sxk rks ckdh iSlk r;kj j[kuk". Saying so, you and your associates went away.

Even though the incident occurred in the night of 29th July,2006, the complainant did not report the incident immediately to police. On 31st July,2006, he mustered courage and called at Antop Hill Police station and reported the matter.

In this connection, on 31st July,2006, on the complaint of Shri Raju Madhukar Kamble an offence under Section 386, 34 IPC was registered against you and your associates at Antop Hill Police Station vide C.R.No. 176/06.

4. In view of the above case, the Police made confidential enquiries with regard to the criminal activities of the Petitioner in the said area viz. GTB Nagar, Indira Nagar, Manjarekar Market, Ambedkar Nagar, Shivaji Chowk, Flank Road, Makkawadi, Sion Koliwada, Antop Hill and

area adjoining thereto in Brihan Mumbai. The Police came to know that the Detenu had victimised a number of persons and that he was dreaded criminal and nobody was ready to make statements openly against the detenu due to fear of retaliation. It appears that after the lot of pursuation, the Authorities were able to record the statements of witness-A on 9th September,2006 with regard to the incident which took place during the 4th week of July,2006. The same has been incorporated as under:-

> In an evening in the fourth week of July, 2006, at about 20.30 hours, the witness was doing his business in the locality of Shivaji Chowk, Sion Koliwada. At that time, you and your two unknown associates approached the witness. Seeing you and your associates, the witness got scared and he stood slightly far on the side of the road. However, the you approached the witness and caught hold of shirt collar and threateningly asked, "eknjpksn /kank djrk gS] cgksr iSlk dekrk gS] ysdhu ges iSlk nsrk ugh py # 1000@& fudky". The witness pleaded to you with folded hands of his helplessness and said that he had no sufficient money with him. On this, you took out a knife from your pocket and threatened the witness by

pointing out the said knife at the stomach of the witness saying "rqe ,slk ugh ekusxk pkdw isV esa ?kqlkM nqaxk rHkh rqEgs ;kn vk;ssxk" One of your associates slapped the witness on his face and other associate turn down his handcart upside down. The witness shouted loudly for help. People collected there. Seeing the crowded people, you raised the knife at them and thundered, "dksbZ vkxs vk;sxk rks mls dkV Mkywaxk". Seeing knife in your hand and hearing the threatening utterances, people got scared and started running helter-skelter and the local shopkeepers downed their shutters. In this helpless situation, the witness was extremely scared and he had no other option and he took out Rs.750/- from his pocket and handed over to you. After accepting the said money, you further threatened the witness saying "bl ,fj;k es /kank djuk gS rks eq>s gIrk nsuk iMsxk- ugh fn;k rks mldk vatke cqjk gksxk vkSj iqyhl es tk;sxk rks dkV Mkywaxk" Saying so, the you and your associates went away. Due to the fear of execution of your threat, the witness did not complain to Police.

5. Similarly, the Police Authorities were able to

record the statement of Witness-B wherein the witness has narrated;

> In a night in the last week of July,2006 at about 23.00 hrs., the witness returned from Sewree where he had gone for work, by a harbour line train. After alighting from the train at GTB Nagar and was proceeding to his house along a narrow lane when the you and your unknown associate emerged in front of the witness and you gave him a forcible jerk. As you are a troublesome criminal, the witness got scared and started going ahead without making any protest. However, you caught hold of his shirt at its neck portion and said, "eq>s /kDdk ekjrk gS] va/kk gks x;k D;k \ rqEgkjh vkaW[ks Bhd djuh iMsxh" Saying so, you started assaulting the witness by bare hands. Your unknown associate carried out search of the pocket of the witness and took out Rs.700/- which he had got on that day from work. When the witness put up resistance, you whipped out a knife from your pant pocket and held it against the neck of the witness and threatened him saying, "fpYyk;sxk rks tku ls ekj nwaxk". The witness was terribly frightened and shouted loudly for help. People collected there. On this, your associate also took out knife from his pocket and both of you raised the knives

in the air and threatened people who collected there, “?kqlk ns lkykssa dks“ Hearing this and seeing your violent mood, people got scared and started running helter- skelter. You then slapped on the face of the witness and further threatened him saying, “ pqipki ?kj tkus dk] tknk gks' k;kjh dh rks tku ls tk;sxk vkSj iqyhl es x;k rks ftank ugh NksMwaxk” saying so, you and your associate went away at the direction of Koliwada Bridge. Due to fear of reprisal at your hands, the witness did not complain to police.

6. Mr.Tripathi, the learned Counsel for the Petitioner further sought to contend that the facts and circumstances disclosed in the above do not amount to creating disturbance of maintenance to public order and in that behalf he relied on a judgment of the Hon'ble Supreme Court in the case of **Arun Ghosh Vs. State of W.B. AIR 1970 SC 1228**, wherein, the Hon'ble Supreme Court was dealing with the attack on a particular family and wherein certain molestation has taken place with regard to the women of that family. In that context, the Hon'ble Supreme Court had held that the same would not amount to disturbance of

public order. However, the Hon'ble Supreme Court had raised a question, which the Court has to consider is ;

> "Does it lead to **disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed".**

7. Mr.Tripathi also referred to and relied on a short-note in the case of **State of U.P. Vs. Sanjai Pratap Gupta @ Pappu & Ors. 2005 ALL MR (Cri.) S.C.S.N.4,** especially the following;

> "The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different."

8. Mr.Tripathi also contended that the impugned detention order was passed by the detaining authority on 26th October,2006, whereas one of the documents which was annexed in the compilation furnished to the Petitioner was certified to be a true copy on 30th October,2006 when the detaining authority has passed the impugned order on 26th October,2006. The said certified copy of the bail bond executed by the detenu which was furnished in the compilation was not before the detaining authority, hence the detention order suffers from non application of mind.

9. Mr.Tripathi, the learned Counsel for the Petitioner raised second ground of objection, which reads as under:-

> The Petitioner says and submits that the detaining authority has taken into consideration a document purporting to be the Bail Bond document in C.R.No.176 of 2006 at page No.221 of compilation showing the execution of the document on 17th October,2007, a copy of which is furnished to the detenu in the compilation. It is pertinent to note that the said Bail Bond document is

executed on 17th October,2007 and its copy is obtained by sponsoring authority on 31st January,2007 and the copy is also certified as true copy on 30th October, 2007. Whereas the order of detention came to be passed on 26th October, 2007 i.e. 5 days before the said document came into the hands of sponsoring authority. It is therefore clear that the detaining authority has not at all gone through the documents of the compilation at the time of formulation of grounds. The Petitioner says and submits that in the opening paragraph of the grounds of detention, it is categorically stated that copies of all documents placed before the detaining authority are enclosed. It is, therefore, highly impossible and improbable to believe that a document is placed before the detaining authority which was not in existence and/or not available to the detaining authority. The averment made in the grounds of detention is erroneous and shows total non-application of mind. The satisfaction vitiates. The order of detention is illegal and bad-in-law, ought to be quashed and set aside. Moreover, even the copy of the said document is not forwarded to the State Government for approval since the approval of the order is made on 31st October,2006.

The Petitioners says and submits that the

approval order dated 31st October, 2006, issued by the State Government is illegal and bad-in-law in view of the fact that the document of Bail Bond at page 221 of the compilation. The document dated 30th October,2006, was sent to the State Government for approval. It is, however, not understood how this material document which was placed before the State Government even though the said documents are in the hands of the sponsoring authority only on 30th October,2006 only. It is, therefore, the case of total non-application of mind of the State Government as well as the Commissioner of Police. The State Government is called upon to disclose what are the documents alongwith the report under Section 3(3) of M.P.D.A. Act,1981, was received on 27th October,2006, by the State Government and whether this document was a part and parcel of the compilation or not. If the document is not there, the approval of the detention order is illegal and bad-in-law. The order of detention is illegal and bad-in-law, ought to be quashed and set aside.

10.With regard to the aforesaid ground the detaining authority has filed a detailed affidavit-in-reply dated 29th September,2007 especially paragraph No.2, which reads;

2. “With reference to amended grounds 6(g) and 6(j) of the Petition, it is true that the document pertaining to the bail bond in C.R.No.176 of 2006 as furnished to the detenu which is appearing at page Nos.93 and 94 of the compilation of documents supplied to the detenu. It is true that the document is dated 17th October,2006 and the copy which is furnished to the detenu is certified copy which was obtained by the Sponsoring Authority on 30th October, 2006. It is denied that since the detention order was issued on 26th October 2006, therefore copy of bail bond executed by the detenu in C.R.No.176 of 2006 was not placed before me and therefore, I had no occasion to go through the said documents. It is denied that since I have stated in the opening paragraphs of the grounds of detention that copies of all the documents placed before me are enclosed and therefore, it was highly impossible and improbable to believe that document placed before me was not in existence and/or not available to me. It is denied that averments in the grounds of detention to that effect is erroneous and shows total non-application of mind on my part. It is denied that my satisfaction is vitiated and the order of detention is illegal and bad-in-law, ought to be quashed and set aside. It is denied that the copy of said document was not forwarded to the State Government for

approval since the approval order was made on 31st October,2006.

I state that the Sponsoring Authority along with proposal had forwarded documents pertaining to C.R.No.176 of 2006. Thereafter, the Sponsoring Authority vide letter dated 18th October,2006 had forwarded copy of bail application and bail order along with bail bond executed by the detenu. I state that the said copy was applied on 17th October,2006 which was received on 18th October,2006 and the same was forwarded to PCB CID on 18th October,2006. I state that accordingly, bail bond executed by the detenu on 17th October, 2006 were placed before me while issuing detention order on 26th October, 2006.

I state that initially I had formulated the grounds of detention on 5th October, 2006. Thereafter PCB CID received a letter dated 18th October,2006 sent by the Sponsoring Authority informing that the detenu was granted bail and thereafter he has availed the bail and copy of bail bond were forwarded. I state that thereafter I have reformulated the grounds of detention and accordingly the reformulated grounds were typed and thereafter they were checked by me. I state that thereafter the Senior Police

Inspector, PCB CID gave his endorsement on 19th October,2006. Thereafter, after again carefully going through all the papers I had issued the detention order on 26th October,2006. I state that paragraph No.5(a) (vi) of the grounds of detention as well as paragraph No.7 of the grounds of detention clearly discloses that I was aware that the detenu was granted bail on 11th October,2006 and he had executed bail bond on 17th October, 2006.

I state that the Sponsoring Authority vide letter dated 18thOctober,2006 had forwarded certified copy of bail bond which was

issued by the Judicial Clerk of the Additional Metropolitan Magistrate, 11th Court, Kurla on 18th October,2006. Since the said document did not bear signature of the detenu and the Jailor, therefore the Sponsoring Authority were asked to apply for fresh copy of bail bond. I state that accordingly the Sponsoring Authority applied for the said copy on 30th October,2006 which was received on the same day. I state that same copy was furnished to the detenu.

In view of this, it is denied that the bail bond executed by the detenu were not placed before me. I state that while submitting the report to the State

Government as contemplated under Section 3(3) of the MPDA Act, certified copy of bail bond executed by the detenu dated 18th October,2006 were forwarded. Hence, contentions of these paragraphs are denied.

11. With regard to first ground of objection raised by Mr.Tripathi that the facts disclosed in the criminal case as well as two in-camera statements would not amount to a case of disturbance of maintenance of public order cannot be sustained. In the first instance, wherein a criminal case has been filed, the incident clearly shows that the detenu had threatened the Raju Madhukar Kamble that he had to spend Rs.20,000/- to come out of the jail in view of the complaint filed by Raju Madhukar Kamble and he had also threatened him that he should pay that amount to him and after that threat he turned the bench upside down on which the Complainant was carrying on the business of lottery tickets and thereafter he caught hold the shirt of the Complainant and abused him and as a result of the same, the people of that locality and other businessmen started collecting in front of the shop and tried to save the Complainant,

whereupon the detenu, Ajit More and two other associates threatened every one that if any one comes near, he would finish them all and in view of the serious threat, every one who had gathered there got scared and ran helter-skelter and the Complainant, due to fear handed over Rs.4000/- to the detenu. The above incident cannot be said to be a private incident or pertaining to only one individual and the same does not disturb public tranquility.

12. Similarly, the statement of witness-A also clearly indicates that as to how he was carrying on business and paying money to the detenu and detenu took out a knife from his pocket and threatened the witness that unless he pays money, the detenu and his associates would finish him. One of the associates of the detenu slapped the said witness and thereafter the other associates turn down the hand cart on which the witness was carrying on his business. The witness shouted loudly for help. The people in that area gathered there. Seeing the crowded people, the detenu raised the knife at them and thundered, “dksbZ vkxs vk;sxk rks mls dkV Mkywaxk”. Seeing

knife in the hands of detenu and hearing the threatening utterances, people got scared and started running helter-skelter and the local shopkeepers downed their shutters and the detenu had also succeeded in extracting Rs.750/- from the witness. The above incident also cannot be said to be isolated pertaining to the individual wherein the detenu had created fear in the minds of public and people in that area got scared and had to ran away, this obviously would affect tranquility.

13. With regard to the statement of witness-”B” when the detenu had accosted the witness, he took out Rs.700/- from his pocket. The witness was terribly frightened and he shouted loudly for help, as a result thereof people in that area gathered and also one of the associates took out a knife from his pocket and both the detenu and his associate raised the knives in the air and threatened people who collected there that they will stab every one. Hearing the above, the people of that area got scared and started running helter-skelter. The above also is a clear case of disturbance of public order.

14. Under the aforesaid facts and circumstances of the case with regard to the first ground of objection, we do not find any merit. All the above i.e. the criminal case and the two in-camera statements of two witnesses clearly indicate the disturbance of maintenance of public order and the objection by Mr.Tripathi on that ground cannot be sustained. In this behalf Mr.Mhaispurkar, the learned A.P.P. referred to and relied upon a judgment of Division Bench of our Court in the matter of **Shri.Mitesh Kishore Vithalani Vs. The State of Maharashtra & Ors. in Criminal W.P. No.1490 of 2006 (dated 5th March,2007),** wherein this Court had taken a view that;

> "a detenu and his associates had entered the beauty parlour to extract money by giving threats that the C.D. Of the beauty parlour would be released on T.V. Because of the detenu's activities, the workers present in the beauty parlour got scared. The nature of this incident is such that though it took place inside the beauty parlour it was likely to spread terror amongst the nearby shop owners and their employees. Hence, it affected public order.

15. With regard to the second ground of objection,

we do not find any substance at all. We have perused the original record which was produced by Mr.Mhaispurkar, the learned A.P.P. and we find that the documents which were placed before the detaining authority was the very same document which was furnished to the detenu. The only difference was when the detaining authority was considering the issue, the same xerox copy of printed bail bond paper was only containing the signature of the Police Officer and the learned Advocate which was executed on 17th October,2006. However, when the detention order was signed, on noticing that the said xerox copy did not contain the signature of the detenu, the authorities had applied for the certified copy containing the detenu's signature, which was furnished to the detenu. To put it in other words, the entire contents of the document was made available to the detenu and the same was before the Detaining Authority and as such even the said ground has no substance. Under the aforesaid facts and circumstances of the case, we find no ground made out for interference. Rule stands discharged.

(SMT.R.S.DALVI,J.) **(DR.S.RADHAKRISHNAN,J.)**